BUSINESS AND COMMERCE CODE

TITLE 10. USE OF TELECOMMUNICATIONS

SUBTITLE A. TELEPHONES

CHAPTER 304. TELEMARKETING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 304.001. SHORT TITLE. This chapter may be cited as the Texas Telemarketing Disclosure and Privacy Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.002. DEFINITIONS. In this chapter:

(1) "Caller identification service or device" means a service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.

(2) "Commission" means the Public Utility Commission of Texas.

(3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4001.068, Government Code.

(4) "Established business relationship" means a relationship that:

(A) is formed by a voluntary two-way communication between a person and a consumer, regardless of whether consideration is exchanged;

(B) pertains to a consumer good or service offered by the person; and

(C) has not been terminated by either party.

(5) "Facsimile recording device" means a device capable of receiving a facsimile transmission.

(6) "Facsimile solicitation" means a telemarketing call made by a transmission to a facsimile recording device.

(7) "State licensee" means a person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or

business.

(8) "Telemarketer" means a person who makes or causes to be made a telemarketing call.

(9) "Telemarketing call" means an unsolicited telephone call made to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

(10) "Telephone call" means a call or other transmission made to or received at a telephone number, including:

(A) a call made by an automated telephone dialing system;

(B) a transmission to a facsimile recording device; and

(C) a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number serviced by a provider of commercial mobile service, as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, Federal Communications Commission rules, or the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), as amended, except that the term does not include a transmission made to a mobile telephone number as part of an ad-based telephone service, in connection with which the telephone service customer has agreed with the service provider to receive the transmission.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.006(a), eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.04, eff. January 1, 2022.

Sec. 304.003. MAKING TELEMARKETING CALL. For purposes of

this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf of another entity. A person makes a telemarketing call on behalf of another entity if, as a result of the telemarketing call, the other entity can:

(1) become entitled to receive money or other property of any kind from a sale solicited during the call; or

(2) receive information obtained during the call to:

(A) extend or offer to extend to the person solicited credit for a consumer good or service; or

(B) directly solicit a sale of a consumer good or service or extend credit for the sale.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.004. INAPPLICABILITY OF CHAPTER TO CERTAIN CALLS. This chapter does not apply to a call made:

(1) by a consumer:

(A) as the result of a solicitation by a seller or telemarketer; or

(B) in response to general media advertising by a direct mail solicitation that clearly, conspicuously, and truthfully makes all disclosures required by federal or state law;

(2) in connection with:

(A) an established business relationship; or

(B) a business relationship that has been terminated, if the call is made before the later of:

(i) the publication date of the first Texas no-call list in which the consumer's telephone number appears; or

(ii) the first anniversary of the date of termination;

(3) between a telemarketer and a business, other than by a facsimile solicitation, unless the business has informed the telemarketer that the business does not wish to receive a telemarketing call from the telemarketer;

(4) to collect a debt; or

(5) by a state licensee if:

(A) the call is not made by an automated telephone dialing system;

(B) the solicited transaction is not completed until a face-to-face sales presentation by the seller occurs and the consumer is not required to pay or authorize payment until after the presentation; and

(C) the consumer has not informed the telemarketer that the consumer does not wish to receive a telemarketing call from the telemarketer.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.005. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect the public against false, misleading, abusive, or deceptive practices in the telemarketing business.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.006. ATTEMPTED WAIVER VOID. An attempted waiver of a provision of this chapter is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. TEXAS NO-CALL LIST

Sec. 304.051. MAINTENANCE OF TEXAS NO-CALL LIST. (a) The commission shall provide for the operation of a database to compile a list of names, zip codes, and telephone numbers of consumers in this state who object to receiving telemarketing calls or other unsolicited telephone calls.

(b) The Texas no-call list is a combined list consisting of the name and telephone numbers of:

(1) each consumer in this state who has requested to be on that list; and

(2) each person in the portion of the national do-not-call registry maintained by the United States government

that relates to this state.

(c) The commission shall:

(1) make available an Internet website at which a person may request that a telephone number be placed on the Texas no-call list; and

(2) provide a toll-free telephone number and mailing address that a person may call or write to obtain a copy of a form to request placement of a telephone number on the Texas no-call list.

(d) The Texas no-call list shall be updated and published on January 1, April 1, July 1, and October 1 of each year.

(e) The commission may contract with a private vendor to maintain the Texas no-call list if the vendor has maintained a no-call list database containing the names and telephone numbers of consumers who have previously requested to be added to a no-call list. A contract under this subsection must require the vendor to publish the Texas portion of the national no-call list in an electronic format for any telemarketer who agrees to use the Texas no-call list only to update the telemarketer's no-call list to include those persons with whom the telemarketer does not have an established business relationship.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.052. TELEMARKETING CALL TO TELEPHONE NUMBER ON LIST PROHIBITED. A telemarketer may not make a telemarketing call to a telephone number published on the Texas no-call list more than 60 days after the date the telephone number appears on the current list.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.053. EXPIRATION, RENEWAL, AND DELETION OF ENTRY. (a) An entry on the Texas no-call list expires on the third anniversary of the date the entry is first published on the list. An entry may be renewed for successive three-year periods.

(b) The telephone number of a consumer on the Texas no-call list may be deleted from the list if:

(1) the consumer makes a written request; or

(2) the telephone number of the consumer is changed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.054. FEE. (a) Except as provided by Subsection (b), the commission may charge a person a reasonable amount not to exceed $3 for a request to place a telephone number on the Texas no-call list or to renew an entry on the list.

(b) The commission shall provide a method for placement or renewal of an entry by use of the Internet at no charge.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.055. PUBLICATION IN TELEPHONE DIRECTORY. A private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost shall include in the directory a prominently displayed Internet website address, toll-free number, and mailing address established by the commission through which a person may request placement of a telephone number on the Texas no-call list or order a copy of the form to make that request.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.056. PLACEMENT OF ENTRIES ON NATIONAL DO-NOT-CALL REGISTRY. The commission or a person the commission designates may:

(1) provide information on the Texas no-call list to the administrator of the national do-not-call registry; and

(2) allow the names and telephone numbers on the Texas no-call list to be placed on the national do-not-call registry. (Bus.& Com. Code, Sec. 44.101(d).)

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.057. GENERAL RULEMAKING AUTHORITY. The commission

may adopt rules to administer this subchapter and Subchapter F, other than Sections 304.254, 304.255, 304.256, and 304.258, as that subchapter relates to the Texas no-call list.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.058. RULES REGARDING ISOLATED CALLS. The commission shall adopt rules providing that a telemarketing call made to a telephone number on the Texas no-call list is not a violation of Section 304.052 if the telemarketing call:

(1) is an isolated occurrence; and

(2) is made by a person who has in place adequate procedures to comply with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.059. RULES REGARDING PUBLIC NOTICE. The commission shall adopt rules requiring each local exchange telephone company and each provider of commercial mobile service, as described by Section 304.002(10)(C), that provides commercial mobile service in this state to inform its customers of the requirements of this subchapter and Sections 304.251, 304.252, 304.253, 304.257, and 304.259, as those sections relate to the Texas no-call list, through:

(1) annual inserts in billing statements mailed to customers;

(2) notification:

(A) included in a customer's electronic bill;

(B) printed on a customer's paper bill;

(C) sent free of charge by messaging service to a customer's mobile telephone number; or

(D) conspicuously published in the consumer information pages of local telephone directories; or

(3) other appropriate means of notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.060. RULES REGARDING DISSEMINATION OF LIST. The commission shall adopt rules providing for:

(1) the distribution of the Texas no-call list in formats, including electronic formats, commonly used by persons making telemarketing calls; and

(2) a fee for each distribution, not to exceed $75.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.061. EDUCATIONAL PROGRAMS. In addition to requiring the notice under Section 304.059, the commission may conduct educational programs designed to inform members of the public of their rights and telemarketers of their obligations under this subchapter and Sections 304.251, 304.252, 304.253, 304.257, and 304.259, as those sections relate to the Texas no-call list.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.062. ASSISTANCE OF DEPARTMENT OF INFORMATION RESOURCES. On request of the commission, the Department of Information Resources shall assist the commission in administering this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.063. ONLINE NOTICE. The commission shall include on its Internet website a notice explaining the application of the Texas no-call list to a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.007(a), eff. September 1, 2009.

SUBCHAPTER C. FACSIMILE TRANSMISSIONS

Sec. 304.101. NOTICE IN FACSIMILE SOLICITATION. In addition to complying with the technical and procedural standards

established by federal statutes or regulations regarding telephone facsimile machines and transmissions, a person in this state who makes or causes to be made a facsimile solicitation shall include in the transmitted document or on a cover page to the document a statement, in at least 12-point type, containing:

(1) the complete name of the person making the facsimile solicitation and street address of the person's place of business; and

(2) a toll-free or local exchange accessible telephone number of the person that:

(A) is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or

(B) automatically and immediately deletes the specified telephone number of the recipient.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.102. ACKNOWLEDGMENT REQUIRED; TRANSMISSION PROHIBITED. On receiving oral or written notice from the recipient of a facsimile solicitation not to send any further facsimile transmissions to one or more specified telephone numbers, the person making the solicitation:

(1) shall within 24 hours after receiving the notice send the recipient of the solicitation written acknowledgment of the receipt; and

(2) other than a single transmission to comply with Subdivision (1), may not make or cause to be made a transmission to a telephone number specified by the recipient.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. CALLER IDENTIFICATION

Sec. 304.151. INTERFERENCE WITH CALLER IDENTIFICATION SERVICE OR DEVICE PROHIBITED. (a) In making a telemarketing call,

a telemarketer may not block the identity of the telephone number from which the call is made to evade a device designed to identify a telephone caller.

(b) A telemarketer may not:

(1) interfere with or circumvent the capability of a caller identification service or device to access or provide to the recipient of the telemarketing call any information regarding the call that the service or device is capable of providing;

(2) fail to provide caller identification information in a manner that is accessible by a caller identification service or device, if the telemarketer is capable of providing the information in that manner; or

(3) cause misleading information to be transmitted to a recipient's caller identification service or device or to otherwise misrepresent the origin of a telemarketing call.

(c) A telemarketer does not violate Subsection (b)(3) if the telemarketer substitutes the name and telephone number of the person on whose behalf the call is made for the telemarketer's name and telephone number.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1363 (H.B. 1992), Sec. 1, eff. September 1, 2019.

Sec. 304.152. EXCEPTION: USE OF CERTAIN SERVICE OR EQUIPMENT. For purposes of Section 304.151, use of a telecommunications service or telecommunications equipment that is incapable of transmitting caller identification information does not of itself constitute interference with or circumvention of the capability of a caller identification service or device to access or provide the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. REGULATORY REPORTS

Sec. 304.202. REPORT BY ATTORNEY GENERAL. (a) Before December 31 of each even-numbered year, the attorney general shall submit a report to the lieutenant governor and the speaker of the house of representatives.

(b) The report must contain for the two-year period ending August 31 of the year of the report:

(1) a list of complaints the attorney general received concerning activities regulated by this chapter, itemized by type;

(2) a summary of any enforcement efforts made by the attorney general; and

(3) the attorney general's recommendations for any changes to this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER F. ENFORCEMENT

Sec. 304.251. ENFORCEMENT BY COMMISSION. (a) Except as provided by Section 304.253, the commission shall receive and investigate complaints concerning violations of Subchapters B, C, and D and may impose an administrative penalty not to exceed $1,000 for each violation.

(b) Notwithstanding Section 304.252, if a complaint alleges that the person violating Subchapter B, C, or D is a telecommunications provider, as defined by Section 51.002, Utilities Code, the commission has exclusive jurisdiction over the violation alleged in the complaint.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.252. ENFORCEMENT BY ATTORNEY GENERAL. (a) Except as provided by Section 304.253, the attorney general may investigate violations of Subchapters B, C, and D and file civil enforcement actions seeking:

(1) a civil penalty in an amount not to exceed $1,000 for each violation, except as provided by Subsection (b);

(2) injunctive relief; and

(3) attorney's fees.

(b) If the court finds the defendant wilfully or knowingly violated Subchapter B, C, or D, the court may increase the amount of the civil penalty to an amount not to exceed $3,000 for each violation.

(c) A violation of Subchapter B, C, or D is subject to enforcement action by the attorney general's consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.253. ENFORCEMENT BY LICENSING AGENCY. (a) A state agency that issues a license to a state licensee shall:

(1) receive and investigate complaints concerning violations of Subchapters B and C by the state licensee; and

(2) may receive and investigate complaints concerning violations of Subchapter D by the state licensee.

(b) The state agency may:

(1) impose an administrative penalty not to exceed $1,000 for each violation;

(2) order restitution for any monetary damages of the complainant in the case of a violation of Subchapter B or D; and

(3) suspend or revoke the state licensee's license, if the agency finds that the licensee wilfully or knowingly violated Subchapter B, C, or D.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.254. DETERMINATION OF AMOUNT OF ADMINISTRATIVE PENALTY. The amount of an administrative penalty imposed under this subchapter must be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) any history of previous violations;

(3) the amount necessary to deter a future violation;

(4) any effort to correct the violation; and

(5) any other matter that justice may require.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.255. STAY OF ADMINISTRATIVE PENALTY. (a) The enforcement of an administrative penalty imposed under this subchapter may be stayed during the time the order is under judicial review if the person on whom the penalty is imposed pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty.

(b) A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right to contest the affidavit as provided by those rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.256. CONTESTED CASE. A proceeding to impose an administrative penalty under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.257. PRIVATE ACTION: TELEMARKETING CALLS. (a) A consumer on the Texas no-call list is presumed to be adversely affected by a telemarketer who calls the consumer more than once. The consumer may bring a civil action based on the second or a subsequent violation of Subchapter B if:

(1) the consumer has notified the telemarketer of the alleged violation;

(2) not later than the 30th day after the date of the call, the consumer files with the commission, the attorney general, or a state agency that licenses the person making the call a verified complaint stating the relevant facts surrounding the violation; and

(3) the commission, attorney general, or state agency receiving the complaint does not initiate an administrative action

or a civil enforcement action, as appropriate, against the telemarketer named in the complaint before the 121st day after the date the complaint is filed.

(b) If the consumer brings an action based on a violation of Section 304.052 and the court finds that the defendant wilfully or knowingly violated that section, the court may award damages in an amount not to exceed $500 for each violation.

(c) Section 304.251(b) does not affect the right of a consumer to bring an action under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.258. PRIVATE ACTION: FACSIMILE TRANSMISSION. (a) A person may bring a civil action based on a violation of Subchapter C:

(1) for damages in an amount equal to the greater of:

(A) the person's actual monetary loss from the violation; or

(B) $500 for each violation;

(2) to enjoin the violation; or

(3) for both damages and an injunction.

(b) If the court finds that the defendant wilfully or knowingly violated Subchapter C, the court may increase the amount of the damages awarded to an amount equal to not more than three times the amount available under Subsection (a)(1).

(c) Section 304.251(b) does not affect the right of a consumer to bring an action under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.259. VENUE. (a) Venue for an action based on a violation of Subchapter B or C is in:

(1) the county in which the telemarketing call was made or received; or

(2) Travis County, if the action is brought by the commission, the attorney general, or a state agency.

(b) Venue for an action under Subchapter D is in Travis

County.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.